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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

HOMER L. BRUCE ET UX, CLARA C. BRUCE, *Petitioners,*

v.

J. P. KING, JR., *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS AND SUPPORTING BRIEF.

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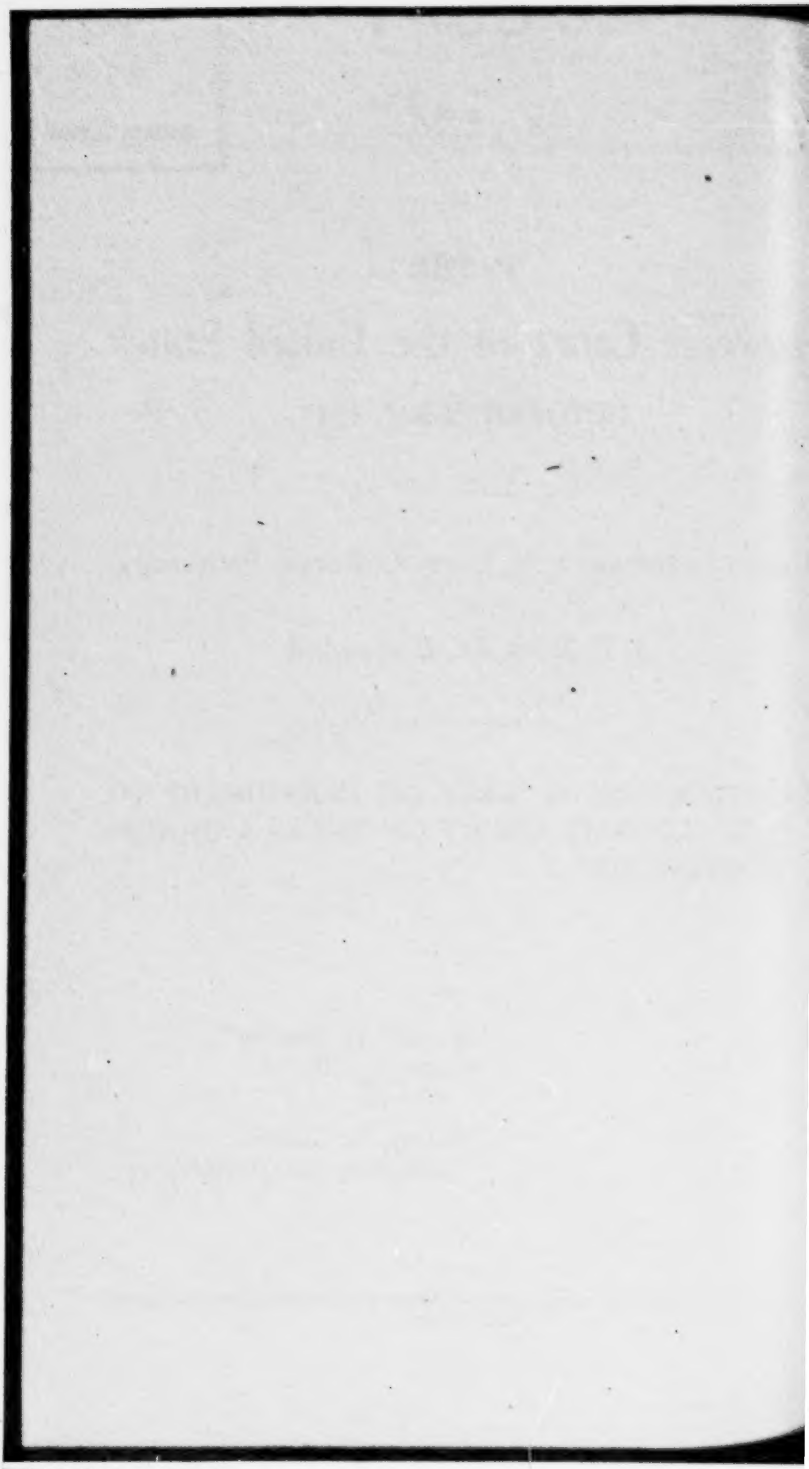

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v.

J. P. KING, JR., *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

May it please the Court:

Petitioners, Homer L. Bruce and wife Clara C. Bruce, respectfully pray for a writ of certiorari to the Supreme Court of Texas at Austin, Texas, to hear this cause and to review the decision of the Supreme Court of Texas. Petitioners respectfully show to this Honorable Court:

1

Summary Statement of the Matter Involved

The statutes of New York and the Constitution and laws of Texas involved are printed in Appendix A to the brief in support of this petition.

Section 15 of Article XVI of the Texas Constitution and Article 4614 of the Texas Revised Civil Statutes,

defining a wife's separate property, and Article 4613, defining a husband's separate property, provide that all property of a spouse owned at marriage and that acquired afterwards by gift, devise or descent shall be separate property. The Courts of Civil Appeals of Texas had held that under these provisions a husband and wife could not by contract, in consideration of their mutual agreements, divide community property into separate property as neither would acquire under such contract the interest in the property in the manner provided by the Constitution and statutes of Texas to make property separate property, although nothing similar to the contract between petitioners in this case had ever been passed upon by the Supreme Court of Texas.

On the other hand Sections 50, 51 and 56 of Article 4, Chapter 14 of the Consolidated Laws of New York, designated as "Domestic Relations Law," provided that property acquired by a married woman in the manner prescribed by that chapter should be her separate property, and further provided that a husband and wife might make any contract between themselves in reference to their property the same as if the wife were unmarried (except they could not contract to dissolve the marriage or relieve the husband of his liability to support his wife).

Petitioners are, and at all times material to this case were, husband and wife and residents of Texas and all actions taken by them, as herein outlined, were with the full knowledge and consent of the wife. While petitioners were in the City of New York, they

opened a bank account in a bank in the City of New York in the husband's name and $5,800 of their community property was deposited in the account. Thereafter all the transactions between petitioners occurred in that bank in the City of New York. The husband cashed a $4,000 check and received from the bank four thousand silver dollars. He cashed a $1,000 check and received two "Official Checks" from the bank payable to the order of petitioners for $500 each. He then drew two checks on the account payable to the order of the petitioners for $400 each. The petitioners then executed a contract between themselves, (R. 15-22.) in which it was recited that in consideration of their mutual agreements the husband transferred to the wife 2,000 of the silver dollars, one of the Official Checks for $500 and one of his personal checks for $400, to be the wife's separate property, and the wife transferred to the husband the remaining 2,000 silver dollars, one Official Check for $500 and one personal check for $400 to be his separate property. The four checks were thereupon appropriately endorsed by the husband and wife so as to make the respective checks payable to the party to whom they were transferred under the contract. (See R. 10 of their original answer which was admitted by respondent). The respective silver dollars and checks were thereupon delivered to each of the parties in accordance with the contract. In the contract petitioners recited that they were familiar with the laws of the State of New York and intended and accordingly contracted, that the contract should be wholly performed and

carried out in New York, that all questions as to the capacity of the parties, the validity and effect of the contract, its meaning and interpretation, the title to the properties acquired by each of them, and all other matters in connection with the contract and its performance should be governed by the law of New York. (R. 17-18, 21).

Thereafter petitioner Clara C. Bruce delivered her silver dollars and two checks to the New York bank and received therefor three Official Checks issued by the bank for $2,000, $500 and $400, and deposited them in three accounts in her name in the First National Bank of Fort Worth, Texas. No additional money was ever deposited by her in any of the three accounts. Subsequent thereto petitioner obtained a judgment in the State District Court of Tarrant County, Texas, (in which Fort Worth is located) against petitioner Homer L. Bruce (R. 1) and had a writ of garnishment served upon the First National Bank of Fort Worth (R. 2-4). The garnishee bank in its answer stated that it had the three accounts in the name of petitioner Clara C. Bruce, that it did not know whether the money therein was community property of the petitioners subject to the garnishment or the separate property of the wife, and interpleaded petitioners and respondent (R. 5-7). The petitioners in their original answer (R. 7-22) pleaded their contract and transactions in New York and traced the separate property obtained by petitioner Clara C. Bruce in New York into the garnishee bank, pleaded that all questions in reference to the

contract and the title acquired by the wife were governed by the laws of New York and that the money became her separate property under the laws of New York and continued to be her separate property when deposited in the garnishee bank. They attached to their answer a copy of their New York contract as Exhibit A (R. 15-22).

Petitioner in his first supplemental petition (R. 22-26) pleaded that the capacity of the petitioners to execute the contract, its validity and effect and the title acquired thereunder by petitioner Clara C. Bruce to the $2,900 were governed by the laws of Texas and not of New York, that said contract was contrary to Section 15 of Article XVI of the Texas Constitution and Articles 4613 and 4614 of the Texas Revised Civil Statutes and the $2,900 acquired by petitioner Clara C. Bruce remained community property, and that, even though the contract were valid under the laws of New York, it violated the above constitutional and statutory provisions of Texas and was therefore against the public policy of Texas and should not be recognized by the Texas courts.

In their first supplemental answer (R. 26-30) petitioners pleaded the contract was governed by the laws of New York, that it had been wholly performed in that state and title had completely vested in her in New York as her separate property and that, even though it might be against the public policy of Texas, she was merely asserting her title acquired in New York as a defense to her suit; and they further

pleaded that the contract would have been valid if executed in Texas.

An appropriate motion under Rule 184a[1] of the Texas Rules of Civil Procedure, and order thereunder, were made and entered so that the trial and appellate courts could take judicial notice of the common law, public statutes and court decisions of New York (R. 30-33). A stipulation was then filed (R. 32-36) to be in effect if any court should not take judicial notice of the laws of New York, setting out the provisions of Sections 50, 51 and 56 of Article 4 of Chapter 14 of the Consolidated Laws of New York and the holding in certain decisions of the courts of New York.

The case was tried upon the pleadings, and judgment was entered by the trial court to the effect that the money of petitioner Clara C. Bruce in the garnishee bank was her separate property and not subject to the garnishment (R. 36). The trial court filed its findings of fact and conclusions of law (R. 38-42) to the effect that the law of New York governed, that the contract was valid, that under

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[1]Rule 184a. Judicial Notice of Law of Other States, Etc.
The judge upon the motion of either party shall take judicial notice of the common law, public statutes, and court decisions of every other state, territory, or jurisdiction of the United States. Any party requesting that judicial notice be taken of such matter shall furnish the judge sufficient information to enable him properly to comply with the request, and shall give each adverse party such notice, if any, as the judge may deem necessary, to enable the adverse party fairly to prepare to meet the request. The rulings of the judge on such matters shall be subject to review.

that law the property became the wife's separate property, and further that it would have been valid under the laws of Texas. Petitioner appealed to the Court of Civil Appeals for the Second Supreme Judicial District of Texas, the appropriate court for appeals from the trial court. That court in an opinion (R. 44-59), reported in 197 S.W.2d 830, held that the New York law governed and the $2,900 became the wife's separate property and remained such when deposited in the garnishee bank and was not subject to the writ of garnishment. It held, however, that if the contract had been made in Texas, it would violate Section 15 of Article XVI of the Texas Constitution and Articles 4613 and 4614 of the Texas Revised Civil Statutes and, even though made in New York, would therefore be against the public policy of the State of Texas, but further held that the contract had already been performed, that title to the $2,900 vested in New York in the wife as her separate property and remained her separate property when deposited in the garnishee bank, and that her title thereto acquired in New York must be respected by the Texas courts.

The respondent applied to the Supreme Court of Texas for a writ of error, which was granted (R. 61-81, 83). Before the Supreme Court of Texas the respondent contended only that the contract was governed by the laws of Texas and not of New York and that, the Court of Civil Appeals having held it violative of the Texas law, the courts of Texas should refuse to enforce the rights of petitioner Clara C.

Bruce arising out of the contract as it contravened the public policy of Texas. The Supreme Court of Texas in its opinion (R. 83-94), reported in 201 S.W.2d 803, reversed the judgments of the lower courts and held that the contract was contrary to the above mentioned provisions of the Texas Constitution and of the Texas Revised Civil Statutes, construed Section 15 of Article XVI of the Constitution of Texas and Articles 4613 and 4614 of the Revised Civil Statutes of Texas as applying to the contract and all matters relating thereto even though the contract was executed and all transactions under it occurred in New York, and held that the contract made in New York was void, that the $2,900 transferred to the wife remained community property and that it was subject to the garnishment to satisfy the judgment against the husband. It accordingly entered its judgment in favor of respondent. This was the first time that the Supreme Court of Texas had ever made any such holding, and its decision was contrary to all of its prior decisions dealing with contracts made outside of the State of Texas, and was its first decision so construing the provisions of the Texas Constitution and statutes.

Petitioners duly filed with the Supreme Court their motion for rehearing (R. 96-138) in which they set forth that the action of the Supreme Court of Texas in giving extraterritorial effect to said constitutional and statutory provisions violated Article I of Section 10 of the Constitution of the United States in that it impaired the obligations of the contract

made by these petitioners in New York, violated Section 1 of the Fourteenth Amendment to the Constitution of the United States in that it deprived petitioner Clara C. Bruce without due process of law of her $2,900 as her separate property, which became her separate property in New York; that said constitutional and statutory provisions of the State of Texas as so construed likewise violated Section 10 of Article I and Section 1 of the Fourteenth Amendment, of the Constitution of the United States; that the action of the Court in holding that the $2,900 was not petitioner's separate property deprived her without due process of law of her said $2,900 in violation of said Section 1 of the Fourteenth Amendment; that the action of that Court in refusing to recognize the validity of the New York contract and to hold that the $2,900 became the separate property of the wife violated Article IV, Section 1, of the Constitution of the United States in that the Supreme Court of Texas refused to give full faith and credit to the public acts of the State of New York to the same effect as given by the courts of New York and particularly the above mentioned Sections 50, 51 and 56; and that the action of the Supreme Court of Texas further violated Section 1 of the Fourteenth Amendment in that through denying the validity of the contract under the laws of New York it abridged the privilege of these petitioners as citizens of the United States to deal with their $5,800 in the State of New York, where it was located, in accordance with, and with the effect provided by, the laws of New York.

The Supreme Court of Texas after due consideration of petitioners' motion for rehearing and the grounds therein contained, including the Federal questions herein presented, overruled the same (R. 139).

2.

Statement Disclosing Basis Upon Which It Is Contended This Court Has Jurisdiction

The jurisdiction of this cause is conferred upon this Honorable Court by Judicial Code, Section 237, as amended; United States Code, Title 28, Section 344(b).

Article V, Sections 1[2] and 3[3] of the Constitution of Texas provide for one Supreme Court, Courts of Civil Appeals and lower trial courts, and for the Supreme Court to have appellate jurisdiction of questions of law in cases of which the Courts of Civil Appeals have appellate jurisdiction, under such restrictions as the

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[2]Section 1. The judicial power of this State shall be vested in one Supreme Court, in Courts of Civil Appeals, in a Court of Criminal Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

[3]Section 3. The Supreme Court shall have appellate jurisdiction only except as herein specified, which shall be co-extensive with the limits of the state. Its appellate jurisdiction shall extend to questions of law arising in cases of which the Courts of Civil Appeals have appellate jurisdiction under such restrictions and regulations as the Legislature may prescribe.

legislature may prescribe. Article 1728[4] of the Revised Civil Statutes of Texas of 1925, provides that the Supreme Court shall have appellate jurisdiction in all cases brought to the Courts of Civil Appeals from final judgments of trial courts, involving the construction of statutes or in which an error of substantive law has been committed by a Court of Civil Appeals. In this case the Supreme Court of Texas granted respondent's Application for Writ of Error and took jurisdiction. (R. 83). The Supreme Court handed down its opinion (R. 83) and entered its judgment (R. 94) on April 23, 1947, reversing the judgments of the trial court and Court of Civil Appeals and holding the $2,900 of petitioner Clara C. Bruce was community property and not her separate property.

Under Rules 506, 515, 516 and 517[5] of the Texas Rules of Civil Procedure, promulgated by the Su-

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6. In any other case in which it is made to appear that an error of substantive law has been committed by the Court of Civil Appeals which affects the judgment, but excluding those cases in which the jurisdiction of the Court of Civil Appeals is made final by statute.

[4]Art. 1728. Appellate jurisdiction

The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, extending to all questions of law arising in the following cases when same have been brought to the Courts of Civil Appeals from final judgment of trial courts:

* * *

3. Those involving the construction or validity of statutes necessary to a determination of the case.

* * *

[5]Rule 506. Judgment Becomes Final

The judgment of the Supreme Court shall be final at the expir-

preme Court of Texas, which specific rules deal with procedure in that Court, the judgment of the Supreme

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ation of fifteen days from the rendition thereof, when no motion for rehearing has been filed.

Rule 515. Motion for Rehearing

A motion for rehearing may be filed with the clerk of the court within fifteen days after the date of rendition of the judgment or decision of the court or the order refusing or dismissing an application for writ of error, whether such date be in the same or a succeeding term of such court, and not later; provided, however, that the court in cases of emergency where the ends of justice require it, may deny the right to file such motion. The grounds relied upon for the rehearing shall be distinctly specified in the motion. The motion shall give the name and residence of the counsel of the opposing party if known, and if not known, the name and residence as shown in the record. The party filing such motion shall deliver or mail to each opposing party, or his attorney of record, a true copy of such motion, and shall note on the motion so filed with the clerk that such copies have been so furnished. Upon his failure to do so, he shall accompany his motion with or furnish to the clerk on his request a sufficient number of duplicates or copies thereof for the clerk to use in complying with the provisions of Rule 516. Failure to supply such copies on request of the clerk may result in dismissal of the motion.

Rule 516. Notice on Motion

Upon the filing of such motion the clerk shall notify the opposing party by postal card, and if copies of such motion have not been furnished to the opposing parties or their attorneys of record by the party filing same, the clerk shall mail to the opposing parties or their attorneys of record such copies thereof as have been furnished by the party filing the motion as required in Rule 515.

Rule 517. Hearing on Motion

The opposing party shall have five days after notice, as provided for in Rule 516, in which to file an answer to the motion. Upon the filing of an answer or the expiration of the five-day period, the motion shall be deemed submitted to the court and ready for disposition. However, if the court deems it advisable it may limit the time in which a motion for rehearing or an answer thereto may be filed, and may act upon any motion at any time after it is filed.

Court did not become final until a motion for rehearing was overruled if such motion were filed within fifteen days of its judgment. Petitioners filed a motion for rehearing (R. 96) on May 3, 1947, within the fifteen days. The Supreme Court of Texas, after duly considering petitioners' grounds for rehearing, including the Federal questions herein raised, overruled their motion for rehearing on May 21, 1947. (R. 139), on which date its judgment became the final judgment reviewable by this Honorable Court by certiorari under United States Code Title 28, Section 344(b). *Citizens Bank v. Opperman,* 249 U. S. 448.

3.

Rulings of the Supreme Court of Texas Showing Jurisdiction

No question under the United States Constitution arose in this case until the decision of the Supreme Court of Texas. As above stated, the trial court held that the law of New York governed the contract between petitioners and that the money involved became and remained the separate property of the wife. It further held that the contract was not against the public policy of Texas as it would have been valid if made in Texas. It accordingly entered judgment for petitioners, and respondent appealed to the Court of Civil Appeals. That Court affirmed the judgment of the trial court (R. 59) and in its opinion (R. 44-59) upheld the trial court's ruling that

the New York law governed. It held, however, that the contract was against the public policy of Texas as it would violate Section 15, Article XVI, of the Texas Constitution and Articles 4613 and 4614 of the Texas Revised Civil Statutes, but further held that the contract had been fully performed in New York and the Texas courts must respect the title of the wife acquired in New York.

The Supreme Court of Texas, however, reversed both courts, construed said Section 15, Article XVI and Articles 4613 and 4614 as applying to the contract even though wholly performed in New York and held the wife's $2,900 was still community property. We quote the following excerpt from its opinion (R. 88):

> "The court held that the 'effect and validity' of the New York contract was governed by the laws of New York and not by those of Texas; that Mrs. Bruce acquired as her separate property, title to the $2,900.00 received by her at the time of the full performance of the contract; and that 'having thus acquired the title it continued to remain her separate property after she brought it back to Texas and deposited it in the garnishee bank.'
>
> "We cannot agree. Constitution of Texas, Section 15, Article XVI; Arnold v. Leonard, 114 Tex. 535, 273 S. W. 799."

In addition respondent, as shown by the Supreme Court's opinion, pleaded that both Section 15, Article XVI and the corresponding Article 4614, defining a wife's separate property governed the New York con-

tract (R. 23-24), and the Texas Supreme Court upheld this construction of both the Constitution and the State statute. (Incidentally, *Arnold v. Leonard, supra,* merely held that the Texas Legislature could not by statute add to a wife's separate property any property not included in the constitutional provision and had nothing to do with a contract made in another state.)

This was the first time that the Supreme Court of Texas had so construed the Texas Constitution and statutes as applying to property located in another state. Such a holding was also contrary to its uniform holdings that the validity of contracts are governed by the laws of the state where made, *Lamb v. Hardy,* 109 Tex. 414, 417, 211 S. W. 445, 446; 9 Texas Jurisprudence 360, 362; and that the validity of transfers of property in another state is controlled by the laws of that state. *Frazier v. Moore,* 11 Tex. 755, 758.

In their grounds XVIII to XXIII of their motion for rehearing (R. 105-109), petitioners raised the following Federal questions:

a. The action of that Court in giving extraterritorial effect to the Texas laws and particularly its constitutional and statutory provisions and in holding they governed the New York contract and the $2,900 did not become the separate property of the wife, deprived the wife of her property without due process of law and impaired the obligations of her contract and deprived petitioners without due process of law of their right to make and perform that contract in

accordance with the laws of New York, all in violation of Section 10 of Article I and Section 1 of the Fourteenth Amendment to the Federal Constitution (R. 6-7).

b. Said Section 15 of Article XVI and Articles 4613 and 4614 as so construed as governing the validity and effect of the New York contract and thereby preventing the $2,900 from becoming the wife's separate property, violate Section 10 of Article I and Section 1 of said Fourteenth Amendment by impairing the obligations of the New York contract, by depriving the wife of her separate property without due process of law, and by depriving petitioners without due process of law of their right to make and perform that contract in accordance with the laws of New York (R. 7-8).

c. The action of that Court in holding that it would not recognize the title obtained by the wife in New York to her property as separate property deprived her of her property without due process of law in violation of Section 1 of said Fourteenth Amendment (R. 8).

d. The action of that Court in holding that, when the wife brought her money to Texas, which had become her separate property in New York, it thereupon became community property subject to the garnishment, deprived her of her separate property without due process of law contrary to Section 1 of said Fourteenth Amendment (R. 9).

e. The action of that Court in refusing to recognize the validity of the New York contract and that the $2,900 became the wife's separate property violated Section 1 of Article IV of the United States Constitution in that said Court refused to give full faith and credit to the public acts of the State of New York with the same effect as given by the decisions of the courts of New York, and particularly Sections 50, 51 and 56 of Article 4 of Chapter 14 of the Consolidated Laws of New York, because under said New York public acts and decisions said contract was valid and the $2,900 became the separate property of the wife. (R. 9-10).

f. The action of that Court in holding that the New York contract was invalid and not governed by the New York laws violated Section 1 of said Fourteenth Amendment in that it abridged the privilege of these petitioners as citizens of the United States to deal with their property located in New York in accordance with, and with the effect provided by, the laws of New York.

The Supreme Court of Texas entertained petitioners' motion for rehearing, and after due consideration of the grounds presented, including the Federal questions herein raised, overruled the motion.

The Supreme Court of Texas having considered the Federal questions raised by petitioners and decided them adversely to petitioners, this Honorable Court has jurisdiction to review its judgment. *Brinkerhoff-Faris Trust & Savings Company v. Hill,* 281

U. S. 673; *Great Northern Railway Co. v. Sunburst Oil & Refining Co.,* 287 U. S. 358; *Missouri v. Gehner,* 281 U. S. 313; *Saunders v. Shaw,* 244 U. S. 317, 320.

4.

Grounds Upon Which it is Contended that the Questions Involved are Substantial

Petitioners, when they made their contract in New York, had in their presence in that state their property dealt with thereby, consisting of four thousand silver dollars, two official checks issued by a New York bank, and two personal checks drawn by the husband against their account in the New York bank. Under the law of New York, which alone had jurisdiction of the property involved, the contract was valid and had the effect intended by petitioners.

The decision of the Supreme Court of Texas that the law of Texas governed is contrary to every decision of common law jurisdictions and is directly contrary to *Home Insurance Company v. Dick,* 281 U. S. 397, in which this Honorable Court reversed the Supreme Court of Texas in 15 S.W.2d 1028. The construction by the Supreme Court of Texas of the Texas Constitution and statutes and its action in refusing to recognize the title acquired in New York by petitioner Clara C. Bruce to the $2,900 as her separate property, were directly contrary to the provisions of the Federal Constitution referred to above.

This attempt by the Supreme Court of Texas to apply the laws of that State in this novel extraterritorial manner, if allowed to stand, applies not only to petitioners but also to every citizen of Texas, and denies to all of them their constitutional rights to deal with their property located in other jurisdictions in such manner as the laws of those jurisdictions provide.

5.

Questions Presented

1. Did the laws of New York govern all matters in connection with the New York contract and its performance? We submit that they did.

2. Did the $2,900 transferred by the contract to the wife become her separate property? We submit that it did.

3. When the wife deposited her $2,900 in the garnishee bank, did it remain her separate property? We submit that it did.

4. Did the action of the Supreme Court of Texas in giving extraterritorial effect to the Texas laws and particularly Section 15, Article XVI of the Texas Constitution and Articles 4613 and 4614 of the Texas Revised Civil Statutes, and in holding they governed the New York contract and the $2,900 did not become the separate property of the wife, deprive petitioner Clara C. Bruce of her property without due process of law and impair the obligations of her said contract and deprive petitioners without due process of law

of their right to make and perform that contract in accordance with the laws of New York, all in violation of Section 10 of Article I and Section 1 of the Fourteenth Amendment to the Federal Constitution? We submit that it did.

5. Did said Section 15 of Article XVI and Articles 4613 and 4614 as so construed by the Supreme Court of Texas as governing the validity and effect of the New York contract and thereby preventing the $2,900 from becoming the wife's separate property, violate Section 10 of Article I and Section 1 of said Fourteenth Amendment by impairing the obligations of the New York contract, by depriving the wife of her separate property without due process of law, and by depriving petitioners without due process of law of their right to make and perform their contract in accordance with the laws of New York? We submit that they did.

6. Did the action of the Supreme Court of Texas in holding that it would not recognize the title obtained by petitioner Clara C. Bruce in New York to her property as separate property deprive her of her property without due process of law in violation of Section 1 of said Fourteenth Amendment? We submit that it did.

7. Did the action of the Supreme Court of Texas in holding that, when petitioner Clara C. Bruce brought her money to Texas, which had become her separate property in New York, it thereupon became community property subject to the garnishment, de-

prive her of her separate property without due process of law contrary to said Section 1 of said Fourteenth Amendment? We submit that it did.

8. Did the action of the Supreme Court of Texas in refusing to recognize the validity of the New York contract and that the $2,900 became the separate property of the petitioner Clara C. Bruce violate Section 1 of Article IV of the United States Constitution in that said Court refused to give full faith and credit to the public acts of the State of New York with the same effect as given by the decisions of the courts of New York, and particularly Sections 50, 51 and 56 of Article 4 of Chapter 14 of the Consolidated Laws of New York? We submit that it did.

9. Did the action of the Supreme Court of Texas in holding that the New York contract was invalid and not governed by the New York laws violate Section 1 of said Fourteenth Amendment in that it abridged the privilege of petitioners as citizens of the United States to deal with their property located in New York in accordance with, and with the effect provided by, the laws of New York? We submit that it did.

6.

Reasons Relied on for the Allowance of the Writ

The reasons relied on for the allowance of the writ are that the Supreme Court of Texas has decided Federal questions of substance in a way probably not

in accord with applicable decisions of this Court and other Federal questions of substance not heretofore determined by this Court:

(1) Under the law of New York the contract between the petitioners was valid and the $2,900 became the separate property of petitioner Clara C. Bruce. The Supreme Court of Texas held that petitioners, while they and their property were in New York, were governed by Section 15 of Article XVI of the Texas Constitution and Articles 4613 and 4614 of the Texas Revised Civil Statutes, and therefore their contract was void and the $2,900 did not become the wife's separate property. Such a holding, and the said provisions of the Texas Constitution and statutes as so construed, violate the contract clause of Section 10 of Article I and the due process clause of Section 1 of the Fourteenth Amendment to the Federal Constitution, and are in conflict with the applicable decisions of this Court in *Home Insurance Company v. Dick,* 281 U. S. 397 (reversing the Texas Supreme Court, reported in 15 S.W.2d 1028); *Aetna Life Insurance Company v. Dunken,* 266 U. S. 389 (reversing the Court of Civil Appeals for the Third Supreme Judicial District of Texas, 248 S.W. 165); *New York Life Insurance Company v. Dodge,* 246 U. S. 357 (reversing the Supreme Court of Missouri); *United States v. Guaranty Trust Company of New York,* 293 U. S. 340; and other decisions.

(2) Although under the New York contract the property set aside to the petitioner wife became her

separate property, the Supreme Court of Texas refused to recognize her title so acquired in New York and deprived her of her property in violation of the due process clause of the Fourteenth Amendment. Likewise the action of that Court in holding that when she brought her money to Texas it became community property similarly deprived her of her separate property in violation of the due process clause of the Fourteenth Amendment.

(3) By refusing to recognize the validity of the New York contract and that the $2,900 became the petitioner wife's separate property thereunder in accordance with the laws of New York, the Supreme Court of Texas refused to give full faith and credit, as required by Section 1 of Article IV of the Federal Constitution, to the public acts of the State of New York with the same effect as given by the decisions of the courts of New York and particularly Sections 50, 51 and 56 of Article 4, Chapter 14 of the Consolidated Laws of New York and such holding is in conflict with the decision of this Court in *Chicago and Alton Railroad v. Wiggins Ferry Company,* 119 U. S. 615.

(4) The Supreme Court of Texas held that because of Section 15 of Article XVI of the Texas Constitution and Articles 4613 and 4614 of the Revised Civil Statutes the New York contract was invalid. Such a holding violated the provisions of Section 1 of the Fourteenth Amendment that no state shall make or enforce any law abridging the privileges of citizens of the United States, and such enforcement by the

Supreme Court of Texas of said constitutional and statutory provisions abridged the privilege of these petitioners as citizens of the United States to deal with their property involved in this case in New York in accordance with, and with the effect provided by, the laws of New York.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari may issue out of and under the seal of this Honorable Court directed to the Supreme Court of Texas commanding said Court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the record of all of the proceedings in the Supreme Court of the United States in said cause entitled *J. P. King, Jr., Petitioner v. Homer L. Bruce et ux, Clara C. Bruce, Respondents,* No. A-1129 on its docket, to the end that said cause may be reviewed and determined by this Court as provided by Section 237 of the Judicial Code, as amended, and that your petitioners may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with the provisions of the Judicial Code, and that on

hearing before this Honorable Court said judgment of the Supreme Court of Texas be reversed.

Petitioners further pray this Honorable Court, that upon the granting of this petition, said cause be transferred to the summary docket of this Honorable Court in accordance with paragraph 5 of its Rule 7 as this cause is not of such a character as to require extended argument.

HOMER L. BRUCE
CLARA C. BRUCE
Pro Se

HOMER L. BRUCE
Attorney for Petitioners.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

HOMER L. BRUCE ET UX, CLARA C. BRUCE, *Petitioners,*

v.

J. P. KING, JR., *Respondent*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

Opinions of the Courts Below

The opinion of the Court of Civil Appeals is found at page 44 of the Record and is reported in 197 S.W. 2d 830. The opinion of the Supreme Court of Texas is found at page 83 of the Record and is reported in 201 S.W.2d 803.

II.

Jurisdiction

Stated under headings 2 and 3 of the petition.

III.

Statement of the Case

A full statement of the case has been given under heading 1 of the petition and in the interest of brevity is not repeated.

IV.

The Law

Sections 50, 51 and 56 of Article 4, Chapter 14 of the Consolidated Laws of New York, known as the "Domestic Relations Laws" (dealing with the rights of husbands and wives to contract with each other and providing for separate property of the wife); Section 15 of Article XVI of the Texas Constitution and Articles 4613 and 4614 of the Texas Revised Civil Statutes of 1925 (defining separate property of husbands and wives); and Rule 184a of the Texas Rules of Civil Procedure (dealing with judicial notice of the common law, public statutes and court decisions of other states) are set forth as Appendix A to this brief.

V.

Specification of Errors

1. The Supreme Court of Texas erred in holding that all matters in connection with the New York contract between petitioners and its performance were governed by the laws of Texas and not the laws of New York, and that the contract was therefore void.

2. The Supreme Court of Texas erred in holding

that the $2,900 transferred by said contract to the petitioner wife did not become her separate property.

3. The Supreme Court of Texas erred in holding that, when the petitioner wife deposited her $2,900 in the garnishee bank, it did not remain her separate property but was community property.

4. The Supreme Court of Texas erred in giving extraterritorial effect to the Texas laws and particularly Section 15 of Article XVI of the Texas Constitution and Articles 4613 and 4614 of the Texas Revised Civil Statutes, and in holding that they governed the New York contract and that the $2,900 did not become the separate property of the wife, because such action and holding deprived the petitioner wife of her property without due process of law, impaired the obligations of her said contract, and deprived petitioners without due process of law of their right to make and perform the contract in accordance with the laws of New York, all in violation of Section 10 of Article I and Section 1 of the Fourteenth Amendment to the Federal Constitution.

5. The Supreme Court of Texas erred in construing said Section 15 of Article XVI and Articles 4613 and 4614 as governing the validity and effect of the New York contract and thereby preventing the $2,900 from becoming the wife's separate property, because the same violated Section 10 of Article I and Section 1 of said Fourteenth Amendment by impairing the obligations of the New York contract, by de-

priving the petitioner wife of her separate property without due process of law and by depriving petitioners without due process of law of their right to make and perform their contract in accordance with the laws of New York.

6. The Supreme Court of Texas erred in holding that it would not recognize the title obtained by the petitioner wife in New York to her property as separate property because such action deprived her of her property without due process of law in violation of Section 1 of said Fourteenth Amendment.

7. The Supreme Court of Texas erred in holding that, when the petitioner wife brought her money to Texas, which had become separate property in New York, it thereupon became community property subject to the garnishment, because such action deprived her of her separate property without due process of law contrary to Section 1 of said Fourteenth Amendment.

8. The Supreme Court of Texas erred in refusing to recognize that the New York contract was valid and that the $2,900 became the separate property of the petitioner wife, because such action violated Section 1 of Article IV of the United States Constitution in that said Supreme Court of Texas refused to give full faith and credit to the public acts of the State of New York with the same effect as given by the decisions of the courts of New York, and particularly Sections 50, 51 and 56 of Article 4 of Chapter 14 of the Consolidated Laws of New York.

9. The Supreme Court of Texas erred in holding that the New York contract was not governed by the laws of New York and was invalid because such holding violated Section 1 of said Fourteenth Amendment in that it abridged the privilege of petitioners as citizens of the United States to deal with their property located in New York in accordance with, and with the effect provided by, the laws of New York.

10. The Supreme Court of Texas erred in its various statements in its opinion that one of the declared purposes of the petitioners in making the $2,900 the separate property of the wife was that they might escape any liability for Federal gift taxes as nothing in the record supports such a statement.

11. The Supreme Court of Texas erred in its statement in its opinion that prior to the execution of the New York contract petitioners had on deposit in the garnishee bank $5,800 of community funds because nothing in the record sustains such statement.

12. The Supreme Court of Texas erred in its statement in its opinion that when the writ of garnishment was directed to the garnishee bank the petitioners had $5,800 of community funds on deposit in that bank because nothing in the record sustains such statement.

13. The Supreme Court of Texas erred in its statement in its opinion that the New York transaction between petitioners were had with the declared pur-

pose of securing to petitioner Clara C. Bruce enjoyment in Texas of the property segregated to her and that the segregation of the community was made with a view to its being enjoyed by her in Texas because nothing in the record supports such statements.

14. The Supreme Court of Texas erred in its statement in its opinion that these petitioners desired to obviate gift taxes because nothing in the record supports such statement.

ARGUMENT

Summary of the Argument

Point A

The contract between petitioners executed and performed in New York was valid under the laws of New York, and the $2,900 thereby transferred to the petitioner Clara C. Bruce became her separate property.

Point B

The laws of the State of New York applied to and governed the contract between petitioners, their capacity to execute it, and the title acquired by each of them in the properties dealt with.

Point C

Section 15 of Article XVI of the Texas Constitution and Articles 4613 and 4614 of the Texas Revised Civil Statutes as construed by the Supreme Court of Texas as governing the New York contract, and the action of that Court in giving extraterritorial effect to the Texas laws and holding that they governed the New York contract and that the $2,900 did not become the separate property of petitioner Clara C. Bruce, violated the contract clause of Section 10

of Article I and the due process clause of Section 1 of the Fourteenth Amendment to the Federal Constitution, as petitioner Clara C. Bruce was thereby deprived of her separate property without due process of law, the obligations of said contract were impaired, and petitioners were deprived without due process of law of their right to make and perform the contract in accordance with the laws of New York.

Point D

The action of the Supreme Court of Texas in refusing to recognize the title obtained by petitioner Clara C. Bruce to her $2,900 as her separate property and in holding that, when she brought that money to Texas, it was community property subject to the garnishment, violated the due process clause of Section 1 of said Fourteenth Amendment as it deprived petitioner Clara C. Bruce of her said separate property without due process of law.

Point E

The action of the Supreme Court of Texas in refusing to recognize that the New York contract was valid and that the $2,900 became the separate property of petitioner Clara C. Bruce, violated Section 1 of Article IV of the Federal Constitution, because the Supreme Court of Texas refused to give full faith and credit to the public acts of the State of New York with the same effect as given by the decisions of the courts of New York, and particularly Sections 50, 51 and 56 of Article 4, Chapter 14 of the Consolidated Laws of New York, under which public acts of the State of New York said contract was valid in all respects.

Point F

The holding of the Supreme Court of Texas that the New York contract was not governed by the law of New

York and was invalid, violated Section 1 of said Fourteenth Amendment in that it abridged the privilege of these petitioners as citizens of the United States to deal with their property, covered by said New York contract and located in New York, in accordance with, and with the effect provided by, the laws of New York.

Point G

The statements in the opinion of the Supreme Court of Texas as referred to in petitioners' specifications of errors Nos. 10 to 14 are not supported by the record.

Major Importance of This Case

If the decision in this case is allowed to stand, it will be of far reaching importance. Petitioners executed and performed their contract in New York dealing with their property located in New York. Under the laws of New York the contract was valid. The Supreme Court of Texas, however, held that, merely because petitioners were citizens of Texas, they and their property located in New York continued to be subject to the laws of Texas and their contract was under Texas law void. If Texas may in this instance extend its control over her citizens and their property in another state, there is no limit to the extent to which a state may regulate and limit all the activities of its citizens in all of the other forty-seven states. Such a novel extension of the jurisdiction of a state throughout all of the United States is unprecedented and insupportable, and the resulting confusion is readily apparent. It would be contrary to the various provisions of the Constitution of the United States discussed herein. At this point we

briefly call attention to the prohibition in Section 1 of the Fourteenth Amendment that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States as contradistinguished to citizens of the various States. One of these privileges of a citizen of a State as a citizen of the United States is, without hindrance or control by his State, to go to another State and conduct himself and manage his property located in the latter State according to the latter's law. The rule announced by the Supreme Court of Texas in this case, if sound, nullifies this provision of the Federal Constitution.

Point A

The contract between petitioners executed and performed in New York was valid under the laws of New York, and the $2,900 thereby transferred to the petitioner Clara C. Bruce became her separate property.

Under Sections 50, 51 and 56 of Article 4 of Chapter 14 of the Consolidated Laws of New York (set out in full in Appendix A to this brief) petitioners were expressly authorized to make this contract and the property thereby set aside to the wife became her separate property. These sections, as applied to this case, read in part:

> "Section 50. Property * * * acquired by her (a married woman)as prescribed in this chapter * * * shall continue to be her sole and separate property as if she were unmarried.
>
> "Section 51. A married woman has all the rights in respect to property * * * and to

> make contracts in respect thereto with any person, including her husband * * * as if she were unmarried.
>
> "Section 56. Husband and wife may convey or transfer real or personal property directly, the one to the other, without the intervention of a third person."

The courts of New York have in many cases pointed out that under these statutory provisions a wife may now contract with her husband to the same extent as if she were unmarried and the property acquired by her under these sections is her separate property[1]. We quote the following typical expression[2] by the New York courts: :

> "A wife is now permitted to contract with the freedom of a feme sole, and by the express command of the Legislature she can at last contract even with her husband the same as if they were unmarried, except that they cannot alter or dissolve the marriage, and she cannot release him from his obligation to support her."

Under these plain provisions of the New York law, the contract between petitioners was valid and the property set aside to the wife became her separate property.

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[1] *Winter v. Winter*, 84 N. E. 382, 191 N. Y. 462; *Chemical National Bank of New York v. Kellogg*, 75 N. E. 1103, 183 N. Y. 92; *Goldstein v. Goldstein*, 71 N. Y. S. 807; *Dower v. Dower*, 73 N.Y.S. 1080; *Werner v. Werner*, 154 N.Y.S. 570; *Brooklyn Trust Company v. Lester*, 267 N.Y.S. 827; *In Re Paine's Estate*, 12 N.Y.S. 2d 201.

[2] *Winter v. Winter*, 84 N. E. 382, 386, 191 N. Y. 462.

Point B

The laws of the State of New York applied to and governed the contract between petitioners, their capacity to execute it, and the title acquired by each of them in the properties dealt with.

Under all the accepted principles of the conflict of laws the contract and all transactions in New York between petitioners was governed solely by the laws of New York, and this is true without any consideration of the Federal constitutional questions hereinafter discussed and authorities like *Home Insurance Company v. Dick,* 281 U. S. 397. We call attention to the following specific facts:

1. The $5,800 of community property was taken to New York and deposited in the New York Bank with the consent of the petitioner Clara C. Bruce and all steps taken in connection with the contract and its performance were taken with her consent. (See the contract, R. 15-18, and Defendants' Original Answer, paragraph 3, R. 8-9.)

2. The property dealt with were 4,000 tangible silver dollars, two checks issued by the bank, a New York corporation, and two checks drawn by the petitioner Homer L. Bruce against the account in his name in the New York bank. The silver dollars and checks were in the presence of the petitioners when they executed their contract and performed it in New York.

3. The contract was executed in New York.

4. All through the contract the petitioners con-

tracted that all steps in the performance of the contract, as for example, the delivery of the silver dollars and the checks to the respective petitioners, should be performed in New York, and the contract was wholly performed in New York.

5. The petitioners in the introductory part of their contract (R. 15) recited:

> "This contract is executed by the parties hereto in the City of New York, State of New York, and the parties hereto intend that it shall be wholly performed and carried out in the State of New York, the law of which state being the lex loci contractus, the lex rei sitae and the law of the place of performance.
>
> "The parties hereto are familiar with the statutes and common law and court decisions of the State of New York that all questions as to the capacity of the parties hereto to make this contract, the validity and effect of this contract, the meaning and interpretation of this contract, the title to the properties acquired by the parties hereunder, and as to all other matters in connection with this contract and its performance are governed by the law of New York and recognize that this contract is under the law of New York valid in all respects and binding upon the parties hereto."

The petitioners then in paragraph 8 of their contract (R. 21) contracted as follows:

> "8. This contract and all matters relating hereto, including but not being limited to, the capacity of the parties to make this contract, its validity, effect and interpretation, and all mat-

ters in reference to said transfers and conveyances by the parties hereto of said silver dollars and checks and their proceeds and the nature of the title thereto acquired by the respective parties hereunder, and all acts done by the parties hereto in carrying out their agreements herein contained, shall be governed by the law of New York whether statutory or other kind."

In view of these factors it is impossible to see how the law of Texas could govern this contract in the face of the positive statutes of New York, and particularly in view of the following:

a. The lex loci contractus was the law of New York.

b. The lex rei sitae was the law of New York.

c. The law of the place of performance of the contract was the law of New York.

d. The petitioners intended that the law of New York should govern.

e. The petitioners affirmatively contracted that the law of New York should govern.

f. The State of New York had enacted positive statutes governing and authorizing this contract dealing with these properties located in New York.

We quote the following applicable rules set out in the Restatement of the Law, Conflict of Laws:

"Section 333. CAPACITY TO CONTRACT.

"The law of the place of contracting determines the capacity to enter into a contract."

"Section 255. CAPACITY TO CONVEY CHATTEL.

"Capacity to make a valid conveyance of an interest in a chattel is determined by the law of the state where the chattel is at the time of the conveyance."

"Section 256. FORMALITIES OF CONVEYANCE OF CHATTEL.

"The formal validity of a conveyance of an interest in a chattel is determined by the law of the state where the chattel is at the time of the conveyance."

"Section 257. SUBSTANTIAL VALIDITY OF CONVEYANCE OF CHATTEL.

"Whether a conveyance of a chattel which is in due form and is made by a party who has capacity to convey it is in other respects valid, is determined by the law of the state where the chattel is at the time of the conveyance."

"Section 258. NATURE OF INTEREST CREATED BY CONVEYANCE OF CHATTEL.

"The nature and characteristics of an interest created by a conveyance of an interest in a chattel is determined by the law of the place where the chattel is at the time of the conveyance."

"Section 292. MOVABLES HELD IN COMMUNITY TAKEN INTO ANOTHER STATE.

"Movables held by spouses in community continue to be held in community when taken into a state which does not create community interests."

"Section 291. REMOVAL OF MOVABLES OF SPOUSES TO ANOTHER STATE.

"Interests in movables acquired by either or both of the spouses in one state continue after the movables have been brought into another

state until the interests are affected by some new dealings with the movables in the second state."

"Section 293. MOVABLES HELD SEPARATELY TAKEN INTO ANOTHER STATE.

"Interests in movables held separately by either spouse remain separate interests although the movables are taken into a state which creates community interests therein."

Under these well established rules the capacity of petitioners to execute the contract and conveyance of the property, the validity of the conveyance and the interest created in the petitioner wife by the conveyance were governed by New York law. Likewise under Section 292 the community property taken into New York remained community property until the new dealings with it by petitioners whereupon under Section 291 petitioner wife acquired as her separate property the $2,900, which under Section 293 remained her separate property when she took it into the community law state of Texas.

The early maxim of *mobilia sequuntur personam* was a rule of convenience and has long since given way to the rule that the laws of the place of the contract and location of the property dealt with govern[3].

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[3] 45 *Harvard Law Review* 969, 970; 23 *Harvard Law Review* 270-271; *Frazier v. Moore*, 11 Tex. 755, 758; *Erwin v. Holliday*, 131 Tex. 69, 72, 112 S.W.2d 177, 178-9; *Lamb v. Hardy*, 109 Tex. 414, 417, 211 S. W. 445, 446; *Hutchison v. Ross*, 187 N. E. 65, 262 N. Y. 381; *Weissman v. Banque De Bruxelles*, 173 N. E. 835, 254 N. Y. 488; *United States v. Guaranty Trust Company of New York*, 293 U. S. 340.

In *Hutchison v. Ross,* supra[4], the Court of Appeals of New York had before it substantially an identical case with the present one. In that case the husband and wife were citizens of Quebec in which the community property system existed and under whose laws the husband and wife were incapable of contracting with each other. The husband had in the State of New York certain securities consisting of stocks and bonds which were his separate property. The husband and wife executed a contract between themselves in the nature of a trust agreement with a New York trust company under which the securities were conveyed to the trust to be the separate property of the wife. Later a trustee in bankruptcy of the husband attacked the agreement on the ground that it was void under the law of Quebec. The New York Court of Appeals in an exhaustive review of the questions held that, since the property dealt with was located in New York and the contract was consumated in New York, the contract was valid even though the court recognized it would have been void if made in Quebec, and held that the interest in the securities created by the trust became the separate property of the wife. We quote the following brief excerpt from the court's opinion at 187 N. E. page 69:

> "The rules that both the capacity to make a valid conveyance of tangible chattels and securities and the essential validity of such conveyance are determined by the law of the State where the chattel is situated at the time of the conveyance

[4]187 N. E. 65, 262 N. Y. 381.

have been generally applied to conveyances *inter vivos.*"

These rules apply not only to the tangible silver dollars but to the checks involved[5], this Court having stated[6]:

> "But under settled principles of conflict of laws, adopted by both federal and state courts, the validity of a transfer of a chattel brought into a country by the consent of the owner is governed by its law; and that rule applies to negotiable instruments. Embiricos v. Anglo-Austrian Bank (1905), 1 K. B. 677; Weissman v. Banque De Bruxelles, 254 N. Y. 488, 494, 173 N. E. 835. Compare Disconto-Gesellschaft v. United States Steel Corp., 267 U. S. 22, 28. See Queensboro Nat. Bank v. Kelly, 48 F.2d 574, 576."

When the $2,900 became the wife's separate property in New York and was taken by her to Texas, it remained her separate property[7], and not even a positive statute of the state legislature could constitutionally convert that separate property into community property[8]. In addition to the foregoing authorities we refer to other decisions by this Court on the same questions in our discussion of constitutional

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[5] *Weissman v. Banque De Bruxelles,* 173 N. E. 835, 254 N. Y. 488.

[6] *United States v. Guaranty Trust Company of New York,* 293 U. S. 340.

[7] Restatement of the Law, *Conflict of Laws,* Section 293; *Oliver v. Robertson,* 41 Tex. 422; *Duke v. Reed,* 64 Tex. 705, 715; *Blethen v. Bonner,* 93 Tex. 141, 53 S. W. 1016; *McDaniel v. Harley,* 42 S. W. 323.

[8] *In Re Thornton's Estate,* 33 P.2d 1, 1 Cal.2d 1.

questions[9]. None of the authorities cited by the Supreme Court of Texas support its decision.

Points C and D

The Due Process Clause of Section 1 of the Fourteenth Amendment and the Contract Clause of Section 10 of Article I of the Federal Constitution

Section 1 of the Fourteenth Amendment provides that no state shall deprive any person of property without due process of law, and the first clause of Section 10 of Article I provides that no state shall pass any law impairing the obligation of contracts.

The holding of the Supreme Court of Texas in this case is directly in conflict, under the due process clause, with the decision of this Court in a directly similar case of *Home Insurance Company v. Dick*, 281 U. S. 397, in which this Court reversed the Supreme Court of Texas. In that case Dick, a citizen of Texas, entered into an insurance contract in Mexico to insure certain property in Mexico. The contract provided that no suit might be brought on the contract unless brought within one year of a loss, whereas a Texas statute forbade any agreement limiting the time for suit to a shorter period than two years. A loss having occurred, Dick brought suit on the contract in Texas more than one year after the loss but within two years. Service on the Insurance Company was obtained by publication and a garnish-

[9] *Home Insurance Company v. Dick*, 281 U. S. 397; *Aetna Life Insurance Company v. Dunken*, 266 U. S. 389; *New York Life Insurance Company v. Dodge*, 246 U. S. 357.

ment was run upon certain of its creditors residing in Texas. The garnishees pleaded that the contract had been made in Mexico and set up the one year provision as a defense. Dick pleaded the Texas statute and that the one year provision was against the public policy of the State of Texas, and the Supreme Court of Texas sustained Dick's position and refused to recognize the defense. (In this case the petitioners pleaded in defense against the garnishment the execution and performance of the contract in New York and the title acquired by the petitioner wife in New York to her money as separate property.) This Court reversed the Supreme Court of Texas, held that the validity of the contract was governed by the law of Mexico, the fact that Dick was a resident of Texas was without significance, and that the refusal of the Supreme Court of Texas to sustain the one year clause as a defense deprived the garnishees of their property without due process of law. This Court said in part on pages 407-408 (italics ours):

> "The Texas statute as here construed and applied deprives the garnishees of property without due process of law. A State may, of course, prohibit and declare invalid the making of certain contracts within its borders. Ordinarily, it may prohibit performance within its borders, even of contracts validly made elsewhere, if they are required to be performed within the State and their performance would violate its laws. But, in the case at bar, nothing in any way relating to the policy sued on, or to the contracts of reinsurance, was ever done or required to be done in Texas. All acts relating to the making of the

policy were done in Mexico. All in relation to the making of the contracts of re-insurance were done there or in New York. And, likewise, all things in regard to performance were to be done outside of Texas. Neither the Texas laws nor the Texas courts were invoked for any purpose, except by Dick in the bringing of this suit. *The fact that Dick's permanent residence was in Texas is without significance. At all times here material, he was physically present and acting in Mexico. Texas was, therefore, without power to affect the terms of contracts so made.* Its attempt to impose a greater obligation than that agreed upon and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law. Compania General de Tabacos v. Collector of Internal Revenue, 275 U. S. 87; Aetna Life Ins. Co. v. Dunken, 266 U. S. 389; New York Life Ins. Co. v. Dodge, 246 U. S. 357. Compare Modern Woodmen of America v. Mixer, 267 U. S. 544, 551."

Prior to the *Home Insurance Company* case, this Court had had to reverse the Court of Civil Appeals for the Third Supreme Judicial District of Texas for committing a similar error. *Aetna Life Insurance Company v. Dunken,* 266 U. S. 389. There a Texas citizen sued an insurance company upon a contract made outside of Texas. This Court held that the contract was governed by the law of the state where made and the Texas court could not read into the policy any additional obligations under the Texas statute.

Similarly, this Court reversed the Court of Appeals of the State of Missouri in *New York Life Insurance*

Company v. Dodge, 246 U. S. 357, where a citizen of Missouri made a contract of insurance in New York with a New York company and later brought suit upon it in Missouri. This Court held that the Insurance Company's contractual obligations were governed by the contract and its provisions as determined to be valid under the laws of New York and that the Missouri Legislature could not prevent one of its citizens from making the contract beyond its borders. This Court said in part on pages 376-377 (italics ours):

> "Under the laws of New York, where the parties made the loan agreement now before us, it was valid; *also it was one which the Missouri Legislature could not destroy or prevent a citizen within its borders from making beyond them by direct inhibition;* and applying the principles accepted and enforced in New York Life Insurance Co. v. Head, we think the necessary conclusion is that such a contract could not be indirectly brought into subjection to statutes of the State and rendered ineffective through a license authorizing the insurance company there to do business. As construed and applied by the Springfield Court of Appeals, Sec. 7897 transcends the power of the State. To hold otherwise would permit destruction of the right—often of great value—freely to borrow money upon a policy from the issuing company at its home office and would, moreover, sanction the impairment of that *liberty of contract guaranteed to all by the Fourteenth Amendment.*"

We particularly call this Court's attention to the above statement that the contract

> "was one which the Missouri legislature could not destroy or prevent a citizen within its borders from making beyond them by direct inhibition."

Just so in the present case, neither the Constitution nor statutes of the State of Texas nor the public policy of that state nor a decision by the Supreme Court of Texas may prevent these petitioners, even though citizens of the State of Texas, from making their contract in New York outside and beyond the borders of the State of Texas.

We likewise call attention to the last part of the above quotation where this Court said that to hold as the Missouri court held would

> "sanction the impairment of that liberty of contract guaranteed to all by the Fourteenth Amendment."

The decision of the Supreme Court of Texas, if allowed to stand, would deprive these petitioners of their similar right and liberty of contract between themselves in the State of New York with reference to their property located in New York in accordance with the laws of New York.

It needs no laboring on our part or citation of authorities to sustain the proposition that, after petitioner Clara C. Bruce obtained her money in New York as her separate property, the action of the Supreme Court of Texas in holding that upon its return to Texas it became community property subject to the garnishment, likewise deprived her of her sepa-

rate property without due process of law. *In Re Thornton's Estate,* 33 P.2d 1, 1 Cal.2d 1.

The contract between petitioners having been valid in New York, the State of Texas could not in view of the contract clause of Section 10 of Article I of the Federal Constitution impair the respective obligations of petitioners thereunder through Section 15 of Article XVI of the Constitution of Texas or Articles 4613 or 4614 of the Texas Revised Civil Statutes.

The Supreme Court of Texas cited the decision of this Court in *Union Trust Company v. Grossman,* 245 U. S. 412, but entirely misapplied the principles of that case. There a Texas wife while in Illinois executed a guaranty for the debt of her husband, which guaranty was valid in Illinois but would have been invalid under Texas law if executed in Texas. She was later sued upon the guaranty in a Federal Court in Texas. This Court held that, since the plaintiff was seeking the affirmative assistance of a Texas court in fixing an obligation upon the wife which was contrary to the statutory provisions of Texas, the Texas courts would refuse to lend their assistance to the plaintiff in enforcing the obligation even though the contract were valid in Illinois. The Circuit Court of Appeals in 228 Federal at page 615 pointed out that a Texas statute provided that the separate property of the wife should not be subject to the payment of the husband's debts and that the Texas courts had the right to refuse to lend their authority to the enforcement of such a contract even though valid where signed, and this Court affirmed that holding

on the same ground. This Court recognized the validity of the guaranty in Illinois. In the present case the petitioner Clara C. Bruce did not ask the affirmative assistance of the Texas courts in enforcing her New York contract against her husband, but merely pleaded her New York title to her separate property as a defense to the respondent's claim on his judgment against her husband. There is no parallel between this case and the Grossman case.

Point E

The action of the Supreme Court of Texas in refusing to recognize that the New York contract was valid and that the $2,900 became the separate property of petitioner Clara C. Bruce, violated Section 1 of Article IV of the Federal Constitution, because the Supreme Court of Texas refused to give full faith and credit to the public acts of the State of New York with the same effect as given by the decisions of the courts of New York, and particularly Sections 50, 51 and 56 of Article 4, Chapter 14 of the Consolidated Laws of New York, under which public acts of the State of New York said contract was valid in all respects.

Section 1 of Article IV of the Federal Constitution provides that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. This Court has repeatedly stated that this applies not only to judgments of courts but to the public statutes of each state as given effect by the courts of such state. For example this court stated[10]:

---

[10] *Chicago and Alton Railroad v. Wiggins Ferry Company*, 119 U. S. 615 at 622.

"Without doubt the constitutional requirement, Art. IV, Sec. 1, that 'full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state,' implies that the public acts of every state shall be given the same effect by the courts of another state that they have by law and usage at home. This is clearly the logical result of the principles announced as early as 1813 in Mills v. Duryee, 7 Cranch, 481, and steadily adhered to ever since."

We have heretofore pointed out that under Sections 50, 51 and 56 of Article 4 of Chapter 14 of the Consolidated Laws of New York and the decisions of the New York courts applying those public acts, the New York contract between petitioners was valid in all respects. We submit that the action of the Supreme Court of Texas in refusing to give those statutes the effect given them by the courts of New York violated the full faith and credit provision of Section 1 of Article IV of the Constitution.

Point F

The holding of the Supreme Court of Texas that the New York contract was not governed by the law of New York and was invalid, violated Section 1 of said Fourteenth Amendment in that it abridged the privilege of these petitioners as citizens of the United States to deal with their property, covered by said New York contract and located in New York, in accordance with, and with the effect provided by, the laws of New York.

Section 1 of the Fourteenth Amendment of the Federal Constitution provides:

"No state shall make or enforce any law which

shall abridge the privileges or immunities of citizens of the United States."

It has long been established that there are two citizenships, one of the United States and one of the particular state where a citizen resides, that a person as a citizen of the United States has certain privileges protected by the Fourteenth Amendment as contradistinguished from his privileges as a citizen of a state which are not protected by that amendment, and that these privileges as a citizen of the United States may not be impaired even by the state of which he is a citizen[11]. In reference to this provision of the Fourteenth Amendment this Court has recently stated[12]:

> "The result is that whatever latitude may be thought to exist in respect of state power under the Fourth Article, a state cannot, under the Fourteenth Amendment, abridge the privileges of a citizen of the United States, *albeit he is at the same time a resident of the state which undertakes to do so.* This is pointed out by Mr. Justice Bradley in the Slaughter House Case, 1 Woods 21, 28:
>
> " 'The "privileges and immunities" secured by the original constitution were only such as each state gave to its own citizens. Each was prohibited from discriminating in favor of its own citizens and against the citizens of other states.
>
> " 'But the fourteenth amendment prohibits any state from abridging the privileges or immuni-

[11] *Slaughter-House Cases,* 83 U. S. (16 Wall) 36; *United States v. Cruickshank,* 92 U. S. (II Otto) 542; *Twining v. State of New Jersey,* 211 U. S. 78, 95.

[12] *Colgate v. Harvey,* 296 U. S. 404, 428, 429 and 430.

ties of citizens of the United States, whether its own citizens or any others. It not merely requires equality of privileges but it demands that the privileges and immunities of all citizens shall be absolutely unabridged, unimpaired.' "

* * * * *

"Among those privileges, however, undoubtedly is the right to pass freely from one State to another. Crandall v. Nevada, supra; Williams v. Fears, 179 U. S. 270, 274. And that privilege, obviously, is as immune from abridgement by the state from which the citizen departs as it is from abridgement by the state which he seeks to enter. This results from the essential character of national citizenship. Cf. In re Kemmler, 136 U. S. 436, 448; Duncan v. Missouri, 152 U. S. 377, 382; In re Quarles and Butler, 158 U. S. 532, 536; United States v. Cruickshank, supra, at p. 552."

* * * * *

"The right of a citizen of the United States to engage in business, to transact any lawful business, or to make a lawful loan of money in any state other than that in which the citizen resides is a privilege equally attributable to his national citizenship. A state law prohibiting the exercise of any of these rights in another state would, therefore, be invalid under the Fourteenth Amendment."

As citizens of the United States petitioners had the right to depart from the State of Texas, to go into New York, to take their property into New York and to transact any business in connection with that property they desired, all in accordance with the laws of New York. Yet the State of Texas, acting through its

Supreme Court, has attempted to deny this right to the petitioners by holding that whatever they did in New York was still subject to all the restrictions of the laws of the State of Texas. If the State of Texas may thus extend the force of its laws, there is no limit to the burdensome restrictions that it may place upon its citizens in all of their activities throughout the United States, and the resulting confusion would be unbearable. Such action by the State of Texas is prohibited by this provision of the Federal Constitution.

Point G

The statements in the opinion of the Supreme Court of Texas as referred to in petitioners' specifications of errors Nos. 10 to 14 are not supported by the record.

The Supreme Court of Texas has made a number of statements in its opinion in reference to the facts as more specifically set forth in petitioners' specification of errors Nos. 10 to 14 which have no support in the record. While we submit that these erroneous facts stated in that opinion could, even if true, have no bearing upon the questions in this case, nevertheless, if this Court should consider them pertinent, it has the power and should disregard them[13] as not being supported by any evidence whatsoever in the record.

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[13] *Cyclopedia of Federal Procedure,* Second Edition, Volume 12, pages 374-376, Notes 74-78; *Postal Telegraph Cable Company v. Newport,* 247 U. S. 464; *Truax v. Corrigan,* 257 U. S. 312; *Beidler v. South Carolina Tax Commission,* 282 U. S. 1; *Adam v. Saenger,* 303 U. S. 59.

Conclusion

It is respectfully submitted that this case is such as to call for the exercise by this Court of its supervisory powers and we, therefore, respectfully pray that the petition for writ of certiorari to the Supreme Court of Texas be granted.

HOMER L. BRUCE
CLARA C. BRUCE
Pro Se

HOMER L. BRUCE
Attorney for Petitioners

APPENDIX A

Sections 50, 51 and 56 of Article 4, Chapter 14 of the Consolidated Laws of New York, said Chapter 14 being referred to in said Consolidated Laws as the "Domestic Relations Law."

50. Property of married woman. Property, real or personal, now owned by a married woman, or hereafter owned by a woman at the time of her marriage, or acquired by her as prescribed in this chapter, and the rents, issues, proceeds and profits thereof, shall continue to be her sole and separate property as if she were unmarried, and shall not be subject to her husband's control or disposal nor liable for his debts.

51. Powers of married woman. A married woman has all the rights in respect to property, real or personal, and the acquisition, use, enjoyment and disposition thereof, and to make contracts in respect thereto with any person, including her husband, and to carry on any business, trade or occupation, and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts, as if she were unmarried; but a husband and wife cannot contract to alter or dissolve the marriage or to relieve the husband from his liability to support his wife. All sums that may be recovered in actions or special proceedings by a married woman to recover damages to her person, estate or character shall be the separate property of the wife. Judgment for or against a married woman, may be rendered and enforced, in a court of record, or not of record, as if she was single. A married woman may confess a judgment specified in section five hundred and forty of the civil practice act.

Section 56. Husband and wife may convey to each other or make partition. Husband and wife may convey or transfer real or personal property directly, the

one to the other, without the intervention of a third person; and may make partition or division of any real property held by them as tenants in common, joint tenants or tenants by the entireties. If so expressed in the instrument of partition or division, such instrument bars the wife's right to dower in such property, and also, if so expressed, the husband's tenancy by courtesy.

* * * * *

Section 15 of Article XVI of the Constitution of Texas

Sec. 15. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

* * * * *

Articles 4613 and 4614 of the Texas Revised Civil Statutes of 1925

Art. 4613. Husband's separate property.

All property of the husband, both real and personal, owned or claimed by him before marriage, and that acquired afterwards by gift, devise, or descent, as also the increase of all lands thus acquired, shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife, either before or after marriage, except for necessaries furnished herself and children after her marriage with him, nor for torts of the wife. During marriage the husband shall have the sole manage-

ment, control and disposition of his separate property, both real and personal.

Art. 4614. Wife's separate property.

All property of the wife, both real and personal, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, as also the increase of all lands thus acquired, shall be the separate property of the wife. The wife shall have the sole management, control, and disposition of her separate property, both real and personal; provided however, the joinder of the husband in the manner now provided by law for conveyances of the separate real estate of the wife shall be necessary to the incumbrance or conveyance by the wife of her lands, and the joint signature of the husband and wife shall be necessary to a transfer of stocks and bonds belonging to her or of which she may be given control by this law.

* * * * *

Rule 184a of the Texas Rules of Civil Procedure

Rule 184a. Judicial Notice of Law of Other States, Etc.

The judge upon the motion of either party shall take judicial notice of the common law, public statutes, and court decisions of every other state, territory, or jurisdiction of the United States. Any party requesting that judicial notice be taken of such matter shall furnish the judge sufficient information to enable him properly to comply with the request, and shall give each adverse party such notice, if any, as the judge may deem necessary, to enable the adverse party fairly to prepare to meet the request. The rulings of the judge on such matters shall be subject to review. Promulgated by order of October 10, 1945, effective February 1, 1946.

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No. 243

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

HOMER L. BRUCE ET UX, CLARA C. BRUCE, *Petitioners*,

v.

J. P. KING, JR., *Respondent*

On Petition for a Writ of Certiorari to the Supreme Court of the State of Texas

---

MEMORANDUM FOR THE RESPONDENT

Opinions Below

The opinion of the Court of Civil Appeals (R. 44) is reported at 197 S.W.2d 830; that of the Supreme Court of Texas (R. 83) at 201 S.W.2d 803.

Jurisdiction

This is a case in which this Court has jurisdiction under Section 237, as amended, of the Judicial Code, which is Section 344(b), Title 28, United States Code.

Questions Presented

These are adequately presented under heading 5 o the petition for certiorari.

Statutes Involved

These are set forth in Appendix A to the brief i support of the petition for writ of certiorari.

Statement of the Case

The statement set forth by petitioners under hea ing 1 of the petititon for writ of ceriorari is fu and adequate.

Argument

For reply to the petition for writ of ceriorari an the brief in support thereof, the respondent presen to this Court the same points, argument and author ties as were made by the respondent under his Firs Second and Fourth Points in his application for wri of error to the Supreme Court of Texas. Thes points are set out at pages 68-69 of the record an respondent's argument and authorities under them respectively, may be found at pages 69-76, and page 77-80 of the record. Respondent respectfully ask that this Court refer to those points and the argu ment and authorities thereunder as fully setting ou this respondent's reply to petitioners.

In the event that this Court should grant the pet tion for certiorari, respondent agrees that it may

transferred to the summary docket of this Court as requested by petitioners at the conclusion of their petition.

Respectfully submitted,

R. K. HANGER
Attorney for Respondent

CANTEY, HANGER, MCMAHON,
MCKNIGHT & JOHNSON
Of Counsel

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PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

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Come now the above named petitioners, Homer L. Bruce and wife, Clara C. Bruce, and present this their petition for a rehearing of their petition for a writ of certiorari in the above entitled cause, and in support thereof respectfully show:

Summary of Facts

Petitioners, husband and wife, citizens of Texas, a community property law state, while in New York executed a contract between themselves under which they divided $5,800 of their community money, located in New York, so that $2,900 became the separate property of each. Under Sections 50, 51 and 56, Article 4, Chapter 14, *Consolidated Laws of New York,* and *Hutchison v. Ross,* 187 N. E. 65, 262 N. Y.

381, and many other New York decisions, the contract was valid in all respects. The wife thereafter deposited her separate $2,900 in a Texas bank. Thereafter respondent obtained a judgment against the husband and ran a garnishment on the bank. Under Texas law, if the $2,900 were the wife's separate property, it was not subject to the garnishment for the husband's debt.

Section 15, Article XVI, of the *Texas Constitution* defines a wife's separate property as that owned by her at marriage and that acquired afterward by gift, devise or descent. Articles 4613 and 4614, *Texas Revised Civil Statutes,* 1925, have a similar definition of the separate property of each. The trial court and intermediate Court of Civil Appeals held the money became the wife's separate property in New York and remained her separate property when deposited in the Texas bank. The Supreme Court of Texas, despite the Federal constitutional points hereinafter pointed out, held that the New York contract was governed by the above cited provisions of the Texas Constitution and statutes, that the contract was void, and the wife's $2,900 was community property subject to the garnishment.

Federal Constitutional Questions Involved

The decision of the Supreme Court of Texas brushes aside the following provisions of the Federal Constitution and the applicable decisions of this Court thereunder:

1. Under the New York statutes above quoted the contract was valid and effective and the right of

the wife to her separate property became vested in New York. The Court of Appeals of New York in *Hutchison v. Ross,* 187 N. E. 65, 262 N. Y. 381, in an exactly similar case involving a contract in New York between spouses of the community property country of Quebec, under whose laws they could make no valid contract between themselves, held the New York law governed and the personal property thereby transferred to the wife as her separate property became her separate property. The Supreme Court of Texas in refusing to recognize the wife's title arising in New York violated the due process clause of the Fourteenth Amendment. This action was in direct conflict with *Home Insurance Company v. Dick,* 281 U. S. 397, in which this Court reversed the Supreme Court of Texas for applying Texas law to a Mexico contract; *Aetna Life Insurance Company v. Dunken,* 266 U. S. 389, similarly reversing the Court of Civil Appeals for the Third Supreme Judicial District of Texas; *New York Life Insurance Company v. Dodge,* 246 U. S. 357, similarly reversing the Court of Appeals of Missouri, and many other cases.

2. The holding of the Supreme Court of Texas and the Texas Constitution and statutes as construed by that court, violated the due process clause of the Fourteenth Amendment by depriving petitioners of their right to contract in New York with reference to their property located in New York in accordance with the laws of New York. *New York Life Insurance Company v. Dodge,* 246 U. S. 357, 376-377.

3. Said decision and Texas Constitution and statutes as so applied violated said due process clause in that the State of Texas has thereby converted the wife's separate property obtained in New York into community property as soon as she brought it into Texas. *In re Thornton's Estate,* 33 P.2d 1, 1 Cal.2d 1, and numerous other cases.

4. Said action by the Supreme Court of Texas was directly in the face of the provision of Section 1, Article IV, of the Federal Constitution that full faith and credit shall be given in each State to the public Acts of every other State. This requires the State of Texas to give full faith and credit to Sections 50, 51 and 56, Article 4, Chapter 14, of the Consolidated Laws of New York as interpreted and applied by the Courts of New York. *Chicago and Alton Railroad v. Wiggins Ferry Company,* 119 U. S. 615, 622. As shown by *Hutchison v. Ross, supra,* and many other New York cases cited in our original petition, the New York courts recognize the validity of the contract between petitioners under said Sections 50, 51 and 56.

5. Said action by the Supreme Court of Texas was directly in the face of the mandate of Section 1 of the Fourteenth Amendment that no State shall make or enforce any law which shall abridge the privileges of *citizens of the United States.* That provision applies to any attempt by a State to abridge the privileges of its own citizens which they have *as citizens of the United States. Colgate v. Harvey,* 296 U. S. 404, 428-430. One of these privileges of a Federal

citizen is to conduct his affairs in another State in accordance with the laws of that State without hindrance by any law of his own State. The said Section 15, Article XVI, of the Texas Constitution as applied in this case took this privilege away from these petitioners.

Importance of This Case

This case, in view of the opinion and action of the Supreme Court of Texas, has taken on an importance far transcending the private interests of petitioners and respondent. The Supreme Court of Texas has stated that the State of Texas may control the actions of its citizens in contracting outside the State of Texas. It has held that the petitioners may not contract in New York with reference to their New York property in accordance with New York law. If the State of Texas may do that in this instance, it may by statute or court decision throw any other kind of restriction around actions of its citizens while in other States. Anyone contracting in one State with a citizen of another State must determine at his peril whether the law of such other State will allow its citizen so to contract. This is an entirely novel doctrine. The action by this Court in denying our petition for a writ of certiorari lends a color of approval by this Court to that doctrine or at least raises a serious question in the minds of all as to what position this Court will take if and when it reviews on its merits a case involving these points.

The decision of the Supreme Court of Texas has

attracted widespread attention. In addition to personal inquiries from numerous attorneys, we have had extended correspondence with the Harvard Law Review and with the publishers of American Law Reports, Annotated, in reference to the basis upon which the Supreme Court of Texas could pitch its decision.

We respectfully submit that the decision of the Supreme Court of Texas is fundamentally wrong, is a most novel departure from all established jurisprudence, violates numerous provisions of the Federal Constitution, and is of such wide importance that this Court should review its action on the merits of this case.

Conclusion

Accordingly, we respectfully request this Court to grant our petition for a writ of certiorari and hear this case on its merits.

We also renew our request that, if our petition is granted, this case be placed upon the summary docket.

HOMER L. BRUCE
CLARA C. BRUCE
Pro Se
HOMER L. BRUCE
Attorney for Petitioners

I, Homer L. Bruce, Attorney for the above named petitioners, do hereby certify that the foregoing petition for a rehearing of their petition for a writ of certiorari is presented in good faith and not for delay.

HOMER L. BRUCE
Attorney for Petitioners